

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8359 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No.

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DIRECTOR - DISTRICT RURAL DEVELOPMENT AGENCY

Versus

BHIMSINGH VELNATH RAVAL

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Appearance:

MR RA MISHRA for Petitioner

MR HK RATHOD for Respondent No. 1, 2

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 03/02/98

ORAL JUDGEMENT

Rule. Mr. H.K.Rathod, learned Advocate waives  
service of the Rule on behalf of the respondents. With  
the consent of the learned Advocates, this matter is  
taken up for final hearing to-day.

The petitioner has challenged the award dated  
4-4-97 passed by the learned Presiding Officer, Labour

Court, Nadiad in Reference LCN) No.325/89 whereby the learned Presiding Officer of the Labour Court, Nadiad, has ordered the petitioner to reinstate the respondent with continuity of service on their original posts with full backwages. It is the case of the petitioner that the respondents were appointed on 19-8-82 and 31-10-83, respectively, on temporary basis as peons for the purpose of cleaning the office and were terminated on 11-9-84. A reference under Section 10(1) of the Industrial Disputes Act, 1947, for reinstatement of the respondents was made for adjudication to the Labour Court, Nadiad by the Additional Labour Commissioner, Nadiad.

In reply to the Statement of Claim, the petitioner has specifically raised a contention that the petitioner is not an "industry" within the meaning of Section 2 (j) and the respondents are not the "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act and, therefore, the reference itself is not maintainable.

It appears that the learned Presiding Officer of the Labour Court has not decided the said questions presumably because the said contentions were not urged at the time of hearing the arguments. Since the said questions have been urged before this Court and which go to the root of the matter being the question of jurisdiction of the Labour Court, I am of the opinion that the matter is required to be remanded to the Labour Court, Nadiad. Moreover, there is no positive evidence on the record as to whether the respondent-workmen were gainfully employed during the pendency of the reference and for that also the parties are required to lead appropriate evidence.

In view of the above, this petition is allowed. The matter is remanded to the Presiding Officer, Labour Court, Nadiad, for the purpose of deciding the questions:

- 1 Whether the petitioner is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 ?
- 2 Whether the respondents are the "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 ? and
- 3 Whether the respondents have been gainfully employed during the pendency of the reference ?

The learned Presiding Officer, Labour Court, Nadiad shall decide the aforesaid question after allowing the parties to lead evidence and hearing them. The Labour Court shall decide the matter as early as possible and preferably within a period of four months from the date of receipt of the writ of this Court.

The learned Advocates of the respective parties have fairly agreed to the suggestion of the Court to reinstate the respondents and pay them backwages from the date of the award i.e. from 4-4-97 till the matter on remand is decided by the Labour Court. Accordingly, it is ordered that the petitioner shall reinstate the respondents on their original posts and pay them backwages with effect from 4-4-97 till the matter on remand is decided by the Labour Court, Nadiad. Mr. Mishra for the petitioner has assured that the direction of this Court for payment of wages shall be complied with by the petitioner within a period of four weeks from today.

Rule is made absolute to the aforesaid extent with no order as to costs.

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